

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Axel HUEGLE et al.

Serial No.: 10/554,419

Filed: October 24, 2005

For: Operating Device

Examiner: Smith, Matthew J.
Group Art: 3635

Conf. No.: 5176

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

SIR:

This is an appeal, pursuant to 37 C.F.R. § 41.37 from the decision of the Examiner in the above-identified application, as set forth in the Final Office Action wherein the Examiner finally rejected Appellant's claims. The rejected claims are reproduced in the Appendix A attached hereto. A Notice of Appeal was filed on March 15, 2010 with a Pre-Appeal Brief Request for Review. A Notice of Panel Decision issued on May 12, 2010. Accordingly, the time for response is one month from the Notice of Panel Decision, i.e., June 12, 2010. Please charge the amount of **\$540** in payment of the government fee for filing an Appeal Brief pursuant to 37 C.F.R. § 41.20 to our Patent and Trademark Office Deposit Account No. 03-2412.

Applicants hereby petition for a 1-month extension of the original shortened statutory response period set in the Notice of Panel Decision. Please charge our Patent and Trademark Office Deposit Account No. 03-2412 in the amount of **\$130** in payment of the government fee for a 1-month extension of time so that the period for response is extended to July 12, 2010. Any

additional fees or charges required at this time in connection with the present application may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

REAL PARTY IN INTEREST

The assignee, Siemens Aktiengesellschaft, of applicant, Axel Huegler, is the real party of interest in the above-identified U.S. Patent Application.

RELATED APPEALS AND INTERFERENCES

There are no other appeals and/or interferences related to the above-identified application at the present time.

STATUS OF CLAIMS

Claims 1-15 have been cancelled. Claims 16-19 and 21-28 have been finally rejected. Claim 29 has been allowed. Claim 20 contains allowable subject matter. Claims 16-19 and 21-28 are on appeal.

STATUS OF AMENDMENTS

There have been no Amendments filed subsequent to the Final Office Action.

SUMMARY OF THE CLAIMED SUBJECT MATTER

Appellant's disclosed invention of independent **Claim 16** is directed to an operating device (1) (see Fig. 1 and pg. 7, lines 6-13 of the specification as originally filed). The operating device (1) includes an operating element (9) (see Fig. 3 and pg. 7, lines 9-11 of the specification as originally filed); a front element (10) comprising an operator-side front side (12) and rear side (13) (see Fig. 2 and pg. 7, lines 15-16 of the specification as originally filed); a

recess (14) in the front element (10), where the recess (14) has a first cylindrical guide (15) extending from the rear side (13) of the front element (10) to form a first contact face (17) on the front element (10), and where the operating element (9) is movable within the recess (14) and the recess (14) is surrounded by the first contact face (17) on the front element (10) (see Fig. 2 and pg. 7, lines 17-25 of the specification as originally filed).

The operating element (9) comprises a flat second contact face (18) which faces the first contact face (17) and is configured such that it is in contact with the first contact face (17) in a non-actuated position (see Figs. 2, 3 and pg. 7, lines 27-32 of the specification as originally filed), where the second contact face (18) is arranged to be removed from the first contact face (17) upon actuation, and the first contact face (17) on the rear side (13) of the front element is of annular and flat configuration (see Fig. 2 and pg. 7, lines 22-25 of the specification as originally filed).

In addition, the operating element (9) is surrounded circumferentially by the flat second contact face (18) which corresponds to the first contact face (17) and is of annular configuration (see Figs. 2,3,4 and pg. 7, lines 29-32), where the first contact face (17) and the flat second contact face (18) have a medium to high surface quality (see pg. 3, lines 21-23 of the specification as originally filed). Moreover, the flat second contact face (18) of the operating element (9) is stressed against the first contact face (17) of the recess (14) by a first elastic element (19) such that a permanently defined surface pressure is set between the first contact face (17) and the flat second contact face (18) (see Fig. 5, pg. 8, line 23 to pg. 9, line 5), where the first contact face (17) and the flat second contact face (18) are arranged to interact as a seal against spray water and dirt (see Fig. 5 and pg. 7, line 33 to pg. 8, line 2 of the specification as originally filed).

GROUND OF REJECTION TO BE REVIEWED IN APPEAL

1. Whether claims 16-18, 21 and 24-28 are patentable under 35 U.S.C. §102(b) over U.S. Patent No. 4,365,569 (“*Hollweck*”)?
2. Whether claims 19, 22 and 23 are patentable under 35 U.S.C. §103(a) over *Hollweck* in view of U.S. Patent No. 4,779,305 (“*Gorsek*”)?

ARGUMENT

1. REJECTION OF INDEPENDENT CLAIM 16, AND DEPENDENT CLAIMS 17, 18, 21 AND 24-28

INDEPENDENT CLAIM 16

Independent claim 16 recites, *inter alia*, “a recess in the front element, said recess having a first cylindrical guide extending from the rear side of the front element to form a first contact face on said front element, the operating element being movable within said recess and said recess being surrounded by the first contact face on the front element”. The Examiner-cited art fails to teach or suggest *at least* the above limitation.

The Examiner (at pg. 4 of the Final Office Action; *Response to Arguments*) asserts that:

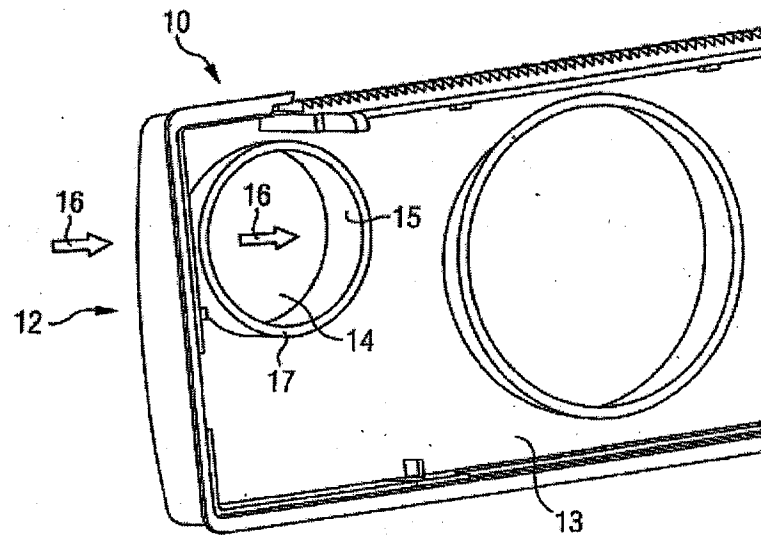
applicants’ claimed recess 14 is considered similar to *Hollweck*’s recess at the contact point of *Hollweck* housing 1 and *Hollweck* button 10. *Hollweck*’s description of ‘hollow, ... thimble-shaped push bottom 10’ implies a cylindrical guide”.

Appellant disagrees that *Hollweck* teaches the expressly-recited structure of independent claim 16. Even if the recess through which the pushbutton (10) of *Hollweck* extends is considered to be a cylindrical guide (which it is not), *Hollweck* still fails to teach or suggest “a

first cylindrical guide extending from the rear side of the front element to form a first contact face”.

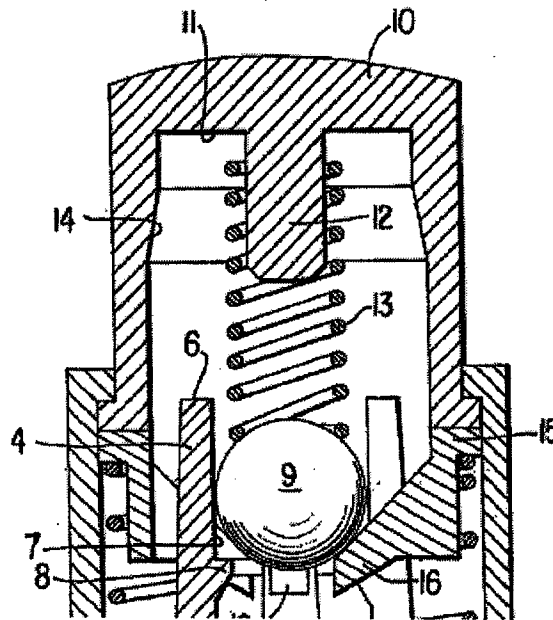
Fig. 1 of *Hollweck* depicts a resetting device including a housing (1) and a push button (10) slideably arranged on the housing (1). The lower end of the push button (10) has a flanged portion (not numbered) that interacts with a contact face of the housing (1), the contact face extending radially inward from the side-wall of the housing. The inside of the contact face defines the recess through which the pushbutton (10) extends. The Examiner contends that the radially inner surface of the contact face is the claimed first cylindrical guide. However, there is no additionally extending surface that extends from the rear of the side of the housing (1) of *Hollweck*. There is no additionally cylindrical guide that is formed and that extends in the required direction and at the location identified by the Examiner.

FIG 2



The *salient* aspect of the claimed configuration is depicted above in Fig. 2 of Appellant's drawings, where the cylindrical guide (15) extends from the rear side of the front element.

FIG. 1



The structure that, according to the Examiner, provides Appellant's claimed feature is depicted above in Fig. 1 of *Hollweck*. Here, the Examiner provided construct of *Hollweck* requires correlation of the push button (10) to Appellant's operating device recited in independent claim 16.

However, *Hollweck* fails to show a structure in which a cylindrical guide extends from the rear side of the front element of the *Hollweck* arrangement, as recited in independent claim 16. In *Hollweck*, the corresponding front surface is located on the front of housing (1) (numeral (1) is not shown here). The housing (1) of *Hollweck*, however, merely surrounds the pushbutton (10) of *Hollweck*. There is no corresponding structure in the *Hollweck* device that is located in the same position as the cylindrical guide of Appellant's independent claim 16 and that extends from the rear side (13) of the front element (10) to form a first contact face (17) on said front element (10) (see Fig. 2 of Appellant's specification depicted above). Accordingly, *Hollweck* fails to disclose "a recess in the front element, said recess having a first cylindrical

guide extending from the rear side of the front element to form a first contact face on said front element”, as recited in claim 16. *Hollweck* thus fails to anticipate independent claim 16.

Dependent claims 17, 18, 21 and 24-28 are allowable for at least the same reasons as is independent claim 16.

For the foregoing reasons, it is respectfully submitted that *Hollweck* fails to anticipate the subject matter recited in claims 16, 17, 18, 21 and 24-28 . The Final Rejection of the claims should be reversed.

2. REJECTION OF DEPENDENT CLAIMS 19, 22 AND 23

The Examiner (at pgs. 3-4 of the Final Office Action) has acknowledged that *Hollweck* fails to teach or suggest the subject matter of dependent claims 19, 22 and 23, and cites *Gorsek* for the expressly-recited features. Appellant, however, respectfully disagrees that the combination of *Hollweck* and *Gorsek* teaches or suggests the expressly-recited subject matter of dependent claims 19, 22 and 23.

Gorsek relates to “a positive-positioning knob assembly which may be used on any device having a rotatable shaft which requires positive incremental positioning or ‘detenting’.” (see col. 1, lines 6-9). However, there is nothing whatsoever in *Gorsek* with respect to the recess in the front element of independent claim 16. Therefore, the deficiency of *Hollweck* remains, because *Gorsek* fails to provide what *Hollweck* lacks.

For the foregoing reasons, it is respectfully submitted that the combined teachings of *Hollweck* and *Gorsek* fail to establish a *prima facie* case of obviousness with regard to the subject matter recited in dependent claims 19, 22 and 23. The Final Rejection of the claims should be reversed.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that Appellant's claims are not anticipated or rendered obvious by the cited prior art and are, therefore, patentable over the art of record, and the Examiner's rejections should be reversed.

Respectfully submitted,
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CLAIMS APPENDIX

1. - 15. (Canceled)

16. An operating device, comprising:

an operating element;

a front element comprising an operator-side front side and rear side;

a recess in the front element, said recess having a first cylindrical guide extending from the rear side of the front element to form a first contact face on said front element, the operating element being movable within said recess and said recess being surrounded by the first contact face on the front element;

the operating element comprising a flat second contact face which faces the first contact face and is configured such that it is in contact with the first contact face in a non-actuated position, and

the second contact face being arranged to be removed from the first contact face upon actuation, wherein the first contact face on the rear side of the front element is of annular and flat configuration;

wherein the operating element is surrounded circumferentially by the flat second contact face which corresponds to the first contact face and is of annular configuration;

wherein the first contact face and the flat second contact face have a medium to high surface quality; and

wherein the flat second contact face of the operating element is stressed against the first contact face of the recess by a first elastic element such that a permanently defined surface pressure is set between the first contact face and the flat second contact face, and the first contact face and the flat second contact face are arranged to interact as a seal against spray water and dirt.

17. The operating device according to claim 16, wherein the operating element is arranged to be movable such that the operating element is guided in the recess in the front element.

18. The operating device according to claim 16, wherein the operating element comprises a first guide arranged to extend on the rear side in an actuation direction and interacts with a corresponding second guide.

19. The operating device according to claim 18, wherein the first guide and the second guide include a contour in the circumferential direction arranged such that the operating element cannot be rotated.

20. The operating device according to claim 16, wherein the first contact face and the flat second contact face comprise a conical configuration.

21. The operating device according to claim 16, wherein the operating element is a pushbutton and the first elastic element is arranged and configured such that when the operating

element is actuated, the first elastic element exerts a restoring force on the operating element counter to the actuation direction.

22. The operating device according to claim 21, wherein the operating element is arranged to be secured against rotation.

23. The operating device according to claim 21, wherein the operating element is secured against rotation in the recess by a second contour of the recess and a first contour of the operating element which is assigned to said second contour.

24. The operating device according to claim 16, further comprising a carrier arranged on the rear side of the front element, the front element being fastened to said carrier.

25. The operating device according to claim 24, wherein the operating element further comprises a hold-down which interacts with the carrier with a form-fitting connection such that, in an absence of the front element, a restoring force from the first elastic element on the operating element is absorbed by the carrier by the hold-down.

26. The operating device according to claim 16, further comprising:

a hold-down element arranged on the rear side of the front element;

wherein the operating element includes a hold-down which interacts with the hold-down element with a form-fitting connection such that, in an absence of the

front element, a restoring force from the elastic element on the operating element is absorbed by the hold-down element by the hold-down.

27. The operating device according to claim 24, wherein the hold-down element is fastened to the carrier.

28. The operating device according to claim 26, wherein the hold-down element is fastened to the carrier.

29. An operating device, comprising:

- an operating element;

- a front element comprising an operator-side front side and rear side;

- a recess in the front element, in which the operating element can move and which is surrounded by a first contact face on the front element;

- the operating element comprising a second contact face which faces the first contact face and is configured such that it is in contact with the first contact face in a non-actuated position, and

- the second contact face arranged to be removed from the first contact face upon actuation, wherein the first contact face on the rear side of the front element is of annular and flat configuration;

- wherein the operating element is surrounded circumferentially by the second contact face which corresponds to the first contact face and is of annular configuration;

wherein the first contact face and the second contact face have a medium to high surface quality and comprise a conical configuration; and

wherein the second contact face of the operating element is stressed against the first contact face of the recess by a first elastic element such that a permanently defined surface pressure is set between the first contact face and the second contact face, and the first contact face and the second contact face are arranged to interact as a seal against spray water and dirt.

EVIDENCE APPENDIX

NONE

RELATED PROCEEDINGS APPENDIX

NONE